

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Senior District Judge Richard P. Matsch

Civil Action No. 12-cv-01841-RPM

AMY BOWERS,

Plaintiff,

v.

GUY CRUZ, individually and as an agent  
and/or employee of the Office of the Fourth Judicial District Probation Department;  
OFFICE OF THE FOURTH JUDICIAL DISTRICT PROBATION DEPARTMENT;  
ELLEN WALKER, Chief Probation Officer;  
OFFICE OF THE STATE COURT ADMINISTRATOR – DIVISION OF PROBATION  
SERVICES, and  
ERIC PHILP, Director of State Court Administrator – Division of Probation Services,

Defendants.

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ORDERS ON MOTIONS

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Amy Bowers claims that her probation officer, Guy Cruz, abused his authority by coercing her to participate in multiple acts of sexual congress between July 15 and August 18, 2011, by threatening her with revocation of probation upon his reporting of her violations of the conditions of probation. She seeks redress under 42 U.S.C. § 1983 in this civil action brought against Cruz; the Fourth Judicial District Probation Office; Ellen Walker as Chief Probation Officer of the Fourth Judicial District Probation Office; the Office of the State Court Administrator – Division of Probation Services, and Eric Philp as Director of the State Court Administrator's Division of Probation Services.

The plaintiff alleges six claims for relief: (1) a claim pursuant to 42 U.S.C. § 1983 against defendant Cruz for the use of unreasonable and excessive force in violation of the 4th Amendment to the United States Constitution; (2) a claim pursuant to 42 U.S.C. § 1983 against defendant Cruz for deprivation of the plaintiff's liberty interest and substantive Due Process rights in violation of the 14th Amendment to the United States Constitution; (3) a claim pursuant to 42 U.S.C. § 1983 against the Fourth Judicial Probation Office; Ellen Walker as Chief Probation Officer of the Fourth Judicial District; the Office of the State Court Administrator, and Eric Philp as Director of the Probation Services Division of the Office of the State Court Administrator for deliberate indifference to the rights of the plaintiff in violation of the 14th Amendment to the United States Constitution for allegedly failing to adequately train and supervise probation officers under their administration, including Cruz; (4) a state law claim of assault and battery against defendant Cruz; (5) a state law claim of intentional infliction of emotional distress against defendant Cruz, and (6) a claim against the defendants collectively, captioned "federal and state liability for the actions of defendant Cruz under the doctrine of respondeat superior."

The defendants other than Cruz moved to dismiss pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6). They function under the Colorado Judicial Department which is an arm of the State of Colorado, immune from suit under the Eleventh Amendment to the U.S. Constitution.

Additionally, Bowers' allegations of constitutional violations by failure to train or supervise Cruz are insufficient to state a claim. There is no vicarious liability for his conduct and the conduct of Cruz as alleged is such an obvious abuse of his authority as to not require special training or supervision.

The plaintiff also claims that the state law tort claims of assault and battery against Cruz are applicable to the other defendants under the doctrine of respondeat superior. That claim of vicarious liability is barred by the Colorado Governmental Immunity Act (CGIA), C.R.S. § 24-10-101 *et seq.*

Defendant Cruz filed a partial motion for dismissal of claims against him in his official capacity. That is barred by the Eleventh Amendment and the plaintiff has clarified that she is not pursuing Cruz in his official capacity. Cruz for the first time in his reply brief contends that the state law tort claims should be dismissed under the CGIA because the plaintiff has not pleaded willful or wanton conduct. That question will be reserved because the plaintiff may be permitted to amend her pleadings upon the facts to be discovered in this case.

Upon the foregoing, it is

ORDERED that the State Defendants' motion to dismiss [# 20] is granted and the plaintiff's claims against the Fourth Judicial District Probation Office, against Ellen Walker as Chief Probation Officer of the Fourth Judicial District Probation Office, against the Office of the State Court Administrator – Division of Probation Services, and against Eric Philp as Director of the State Court Administrator's Division of Probation Services) are dismissed pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6); it is

FURTHER ORDERED that defendant Cruz's partial motion for dismissal [# 39] is granted with respect to his request for clarification that the plaintiff's claims are alleged against Cruz in individual capacity only. It is

FURTHER ORDERED that the plaintiff's motion to withdraw her supplemental authority [#45] is granted and the State Defendants' motion to strike the plaintiff's supplemental authority [#43] is moot. It is

FURTHER ORDERED that the plaintiff's motion for limited discovery and supplemental briefing [#45] is denied.

DATED: February 25, 2013

BY THE COURT:

s/Richard P. Matsch

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Richard P. Matsch, Senior Judge